Supreme Court, U.S.
FILED
APR 7 1992
OFFICE OF THE CLERK

(2)

No. 91-1442

In The

Supreme Court of the United States

October Term, 1991

GERALD COOK, WARDEN OF THE UTAH STATE PRISON,

Petitioner,

vs.

RONALD WATSON LAFFERTY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

M. JAMES BRADY
Counsel of Record
389 North University Avenue
Provo, Utah 84601

MICHAEL D. ESPLIN
GARY H. WEIGHT
43 East 200 North
P.O. Box "L"
Provo, Utah 84603-0200

Attorneys for Respondent

1854
Lutz Appellate Printers, Inc. • NJ (908) 257-6850 • (800) 3 APPEAL • NY (212) 840-4640 • MA (617) 542-1114 DC (202) 783-7288 • PA (215) 925-6500 • USA (800) 5 APPEAL

25

QUESTIONS PRESENTED

1. Did the Court of Appeals act within the provisions of 28 U.S.C. § 2254(d)(8) in reviewing the state court's determination of competency to stand trial?

2. Is the decision of the Court of Appeals in conflict with the case law of this Court and the state Supreme Court?

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents ii

Table of Citations ii

Opinion Below 1

Statement of Jurisdiction 1

Statement of the Case 2

Reasons for Denying the Writ 6

I. The decision of the Tenth Circuit Court of Appeals correctly applied the provisions of 28 U.S.C. § 2254(d)(8) in reviewing the state court's determination of competency. 6

II. The decision to reverse the trial court's competency determination is not in conflict with decisions of this Court or with the state court. 8

Conclusion 11

TABLE OF CITATIONS

Cases Cited:

Demonsthenes v. Baal, 495 U.S. 731, 110 S. Ct. 2223 (1990) 8

Contents

Page

Dusky v. United States, 362 U.S. 402 (1960) 3, 6

Lafferty v. Cook, 949 F.2d 1546 (10th Cir. 1990), rehearing denied, January 3, 1992 ..... 1, 7

Pate v. Robinson, 383 U.S. 375 (1966) 10

United States v. Ballard, 322 U.S. 78 (1944) 9

Statutes Cited:

28 U.S.C. § 1254(1) 2

28 U.S.C. § 2254 6

28 U.S.C. § 2254(d)(8) ..... i, 6

Utah Code Ann. § 77-15-31 2

APPENDIX

Appendix A — Letter from Philip Washburn, M.D. Dated October 10, 1984 ..... 1a

Appendix B — Letter from Peter Heinbecker, M.D., Van O. Austin, M.D., Robert J. Howell, Ph.D. and C. Jess Groesbeck, M.D. Dated January 22, 1985 ..... 3a

Appendix C — Letter from Van O. Austin, M.D., Robert J. Howell, Ph.D., Peter Heinbecker, M.D., J.D., and C. Jess Groesbeck, M.D. Dated March 19, 1985 .... 6a

No. 91-1442

In The

Supreme Court of the United States

October Term, 1991

GERALD COOK, WARDEN OF THE UTAH STATE PRISON,

Petitioner,

vs.

RONALD WATSON LAFFERTY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is published as *Lafferty v. Cook*, 949 F.2d 1546 (10th Cir. 1990), *rehearing denied*, January 3, 1992.

STATEMENT OF JURISDICTION

Following the exhaustion of state remedies, respondent filed

a petition for habeas corpus relief with the United States District Court for the District of Utah. After his petition was denied without an evidentiary hearing, respondent appealed to the United States Court of Appeals for the Tenth Circuit. That court granted respondent's writ and vacated his conviction and sentence. Petitioner's petition for rehearing was denied on January 3, 1992.

Petitioner has sought certiorari under the provisions of 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The respondent, Ronald Watson Lafferty, was convicted in Utah state trial court of two counts of capital felony for the deaths of his sister-in-law and his niece. Respondent claimed that the deaths were carried out pursuant to a revelation which he had received which mandated the "removal" of the victims.

At arraignment in the district court, Lafferty refused to participate after questioning the judge as to whether he had authority to rule on "spiritual issues" upon the basis that the court had no jurisdiction over him. He refused the appointment of counsel because he felt all lawyers and judges were "the arm of flesh" and if they respresented him he would lose his right to spiritual assistance.

The prosecution filed a petition to determine competency of the respondent under the provisions of a Utah state statute providing that any person having reason to believe a defendant to be incompetent could file a petition to have the competency of a defendant examined (Utah Code Ann. § 77-15-3). The court selected two alienists without input or approval of the respondent who, after examination of respondent, filed their written opinion that the respondent was not competent to stand trial (Appendix

A).[1] At the competency hearing held following the examination, the respondent argued that he was competent. The trial court found him competent. The court found that the respondent was able to undertand the nature of the proceedings against him and to assist counsel if he desired. The court made no findings concerning whether or not the respondent had the rational understanding required by *Dusky v. United States,* 362 U.S. 402 (1960).

Within two weeks of having been determined to be competent by the court, the state filed another petition to have the respondent examined based upon bizarre behavior exhibited at the jail which culminated in an unprovoked attack upon a jailer. After examination, the alienists concluded the respondent was competent. There was no hearing held by the court to consider the allegations of the state's petition and the reports of the examiners. The court ruled by a minute entry that the respondent was competent to stand trial without considering whether or not the respondent possessed the rational understanding required by *Dusky.*[2]

---

1. It is of no small relevance to note that none of the six court-appointed examiners who examined the respondent were selected by the respondent. None were privately retained experts. Dr. Phillip Washburn, Dr. C. Jess Groesbeck, Dr. Peter Heinbecker, Dr. Van O. Austin, Dr. Robert J. Hower, and Dr. A.L. Carlisle were all appointed by the court. The only privately retained expert was Dr. Thorne, who was employed by the prosecution, but never examined the respondent.

2. The record reveals that at these competency hearings, the prosecution was in the somewhat unique position of filing a petition questioning the competency of the respondent and then arguing against their own petition. Two of the prosecutors were witnesses who testified that the respondent was competent to proceed, although they had filed the petition to determine competency. Respondent was allowed to represent himself and also took the position that he was competent and capable of proceeding.

Approximately one month after having been found competent a second time, the respondent attempted to hang himself in his cell. Respondent suffered physical and mental impairment as a result of the attempt which aggravated his underlying mental illness. The prosecution filed a third petition to determine respondent's competency and following the examination of the respondent by court-appointed alienists, the court concluded he was not competent to stand trial (Hearing January 28, 1985). (Copies of the reports of the court-appointed experts submitted to the court are attached hereto as Appendix B.)

The respondent was held for examination and observation at the Utah State Hospital where he was tested and observed by the four examiners employed by the state for a period of twenty days. The report of the alienists to the court indicated that they felt the respondent was not competent to proceed. At a subsequent hearing, the court-appointed alienists all testified that the respondent was suffering from a paranoid delusional disorder, and that, in their opinion, he did not have a rational understanding of the nature of proceedings against him. Further, their reports and testimony indicated the respondent could not as a result of his delusional system, assist his attorney in his defense. The court-appointed experts further testified that although there had been some improvement in his memory loss suffered as a result of the suicide attempt, that his condition had not improved to the point that he had full memory, an additional disability to respondent's mental illness which aggravated that condition (Hearing April 2, 1985). (A copy of the report of the alienists submitted to the court is attached hereto as Appendix C.)

The only witness to the contrary was an expert called by the state who had been asked by the prosecution to review the reports of the court-appointed alienists and to observe the respondent in court. The expert had never examined the respondent and had not read all of the reports. He concluded that since the respondent

knew where he was and what he was charged with, and had the "ability to assist counsel" should he choose to do so, respondent was therefore competent to stand trial.

The trial court found respondent "not to be incompetent" to stand trial. During a telephone conference, the court attempted to determine whether or not respondent intended to present an insanity defense, notice of which had previously been filed by respondent's counsel. The court ruled that respondent would not be able to present a defense of diminished capacity or insanity because he refused to be examined by any additional examiners as required by state law. At a subsequent pretrial conference, the court denied a motion by respondent's counsel to withdraw and allow respondent to represent himself. The court also denied a renewed motion to assert an insanity or diminished capacity defense although respondent's counsel indicated that respondent's prior refusal to cooperate in additional examinations (which the respondent did not recall) was based upon the belief that he would be able to present the evidence of the examinations which had been performed at trial. The court reserved decision on whether or not the alienist's findings could be admitted for the limited purpose of showing diminished capacity on the defense of manslaughter, a lessor included offense to homicide.

At the trial, the court indicated that the court-appointed alienists would be allowed to testify on the lesser included defense of manslaughter. However, when counsel for the respondent began to present such evidence, respondent refused to let him proceed, contrary to counsel's opinion that such evidence was imperative to the case. The court would not allow the presentation of the evidence over the objections of respondent, forcing the respondent's counsel to rest. Respondent was convicted of capital homicide.

REASONS FOR DENYING THE WRIT

I.

THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS CORRECTLY APPLIED THE PROVISIONS OF 28 U.S.C. § 2254(d)(8) IN REVIEWING THE STATE COURT'S DETERMINATION OF COMPETENCY.

The petitioner does not assert or quarrel with the proposition that the standard of competency to be applied in this case is that standard of rational understanding set forth in *Dusky v. United States*, 362 U.S. 402 (1969). However, the petitioner incorrectly concludes that "the majority refused to apply the presumption mandated" by 28 U.S.C. § 2254. Subparagraph (d)(8) of 28 U.S.C. § 2254 provides that the presumption of correctness is not appropriate where the federal court, upon review of the record "concludes that such factual determination is not fairly supported by the record." After a review of the state court record, the Court of Appeals determined that the state court had not applied the *Dusky* standard, and, that when the evidence was reviewed with the proper standard, that the record "indisputably does not provide the fair support required to accord the finding a presumption of correctness."

Six court-appointed experts examined the respondent and specifically stated their opinion to the court that the respondent suffered a mental illness and that as a result of the mental illness, he did not have a rational understanding of the nature of the proceedings against him, and further, that as a product of the mental illness, he could not rationally assist his attorney. Even though some of the examiners had found him competent to proceed prior to the respondent's suicide attempt, those examiners indicated in their testimony at the subsequent hearings that they were in error in finding respondent competent in their report.

The only expert to dissent from the position that the respondent was incompetent to stand trial, was the expert privately retained by the state, Dr. Eugene Thorne. Dr. Thorne admitted that he had not read all of the reports of those who had previously examined the respondent, that he had not had the opportunity to observe the respondent for over thirty days, had not even conducted or tested the respondent personally, and had only had a limited opportunity to observe the respondent during the April competency hearing in the courtroom. Although Dr. Thorne recognized that the respondent suffered from a paranoid delusional system, he testified that he was still competent. His understanding of the standard of determination of competence was whether the respondent possessed the ability to cooperate if he chose to do so, whether or not the mental illness impaired his ability to choose. His testimony indicated that he, like the trial court judge, was under the belief that a factual understanding of the proceedings was sufficient and that a mental illness that interfered with a defendant's ability to rationally understand proceedings would "certainly go to an insanity defense, but it certainly wouldn't go to a competency one." *See Lafferty v. Cook*, 949 F.2d 1546 (10th Cir. 1991) at pp. 1553-1554.

While it is obvious that the fact-finder can elect to believe all or none of the testimony of witnesses called, the record below does not justify the trial court's reliance upon the lone opinion of Dr. Thorne over the opinions of those whom the court had appointed to evaluate and report. It is apparent that both the court and Dr. Thorne were laboring under an incorrect understanding of the applicable standard of mental competency required before a defendant is permitted to stand trial. The fact that the respondent demonstrated difficulty in understanding the issues surrounding the defense of insanity where the respondent first indicated he did not wish to cooperate in further evaluations then later expressed his lack of understanding that the failure to cooperate would result in his not being able to assert the defense

and further, the respondent's failure to allow his counsel to present defenses and witnesses critical to his case.

The review of the Court of Appeals of the record in this case is supported by this Court's decision in *Demonsthenes v. Baal*, 495 U.S. 731, 110 S. Ct. 2223 (1990) wherein this Court held that a federal court could not overturn a factual determination made by a state court unless the federal court concluded that the state court determinations were not fairly supported by the record. (110 S. Ct. at 2225). The Court of Appeals conducted an in-depth review of the record and reached the conclusion that the determination of competency was not fairly supported by the record.

The ruling and decision of the Court of Appeals is consistent with the previous decisions of this Court and the petition for writ of certiorari should not be granted.

II.

THE DECISION TO REVERSE THE TRIAL COURT'S COMPETENCY DETERMINATION IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT OR WITH THE STATE COURT.

The petitioner incorrectly states the determination of the examiners to be based upon the religious beliefs of the respondent rather than mental illness. The opinions of the examiners was based upon their finding that the respondent suffered from a paranoid delusional system which was evidenced not only by delusions of a religious nature, but a belief that the courts, the lawyers (including his own), and the state hospital were in "collusion with each other and agents of corrupt man-made law." The March 19, 1985 report of the examiners stated in regard to the paranoia. "Further symptoms of this disorder include a

paranoid delusional system which has generalized to include the entire judicial system, a paranoid pseudo-community involving the legal and social systems, grandiose denial, a religious martyr complex, and severely impaired ability to perceive and interpret reality." In addition to the diagnosis of paranoia, the examiners found evidence of organic brain damage which resulted in an additional diagnosis of amnestic syndrome. This diagnosis was supported by objective medical tests including an EEG exam which was found to be "severely abnormal." This condition was evidenced by an inability to recall events as well as impairment of intellect and judgment. Dr. Thomas Houts, the neurologist who examined the respondent following the suicide attempt, stated:

> The duration of anoxia was certainly enough to cause severe diffuse cortical dysfunction initially with coma and decerebration. He has made substantial improvement but still has evidence of memory impairment. There is also the possibility of frontal-lobo impairment with less judgment. Mild organic changes in the personality might be expected to exacerbate per-existing tendencies towards egocentricity, impulsiveness, and lack of judgment.

Petitioner has accused the majority opinion of the Court of Appeals of "selectively reading" the trial record. In fact, petitioner's reading and reporting of the opinions of the examiners suffers from selectivity. The reference to "Messianic grandiosity" is taken from the same report in which the examiners indicate several other forms of expression and effect of the paranoia of the respondent in addition to "Messianic grandiosity", including the organic diagnosis of amnestic syndrome which has nothing to do with religion.

United States v. Ballard, 322 U.S. 78 (1944) does not hold

that a delusional system which has some elements of religious belief or conviction cannot be the basis of a finding of incompetency. The "Messianic grandiosity" reference stated above is recognized as a symptom of mental illness and as such is described and recognized in the DSM-3, the manual of diagnosis accepted as the "Bible" of the psychological and psychiatric professions. The fact that a mental illness may have some elements of religion does not require that the mentally ill person be treated any differently than those suffering from the same illness which may not manifest an element of religion. The focus should be, as was the focus of the court-appointed experts below, does the person have a mental illness and if so, what effect does that illness have on the patient's ability to rationally understand proceedings and circumstances.

The standard for determining competence is constitutionally mandated as set forth in *Pate v. Robinson*, 383 U.S. 375 (1966). The decision of the Court of Appeals is in conformity with that constitutional mandate and in conformity with the decisions of this Court. The decision of the Court of Appeals conflicts with the decision of the Utah State Supreme Court only in so far as that court's decision conflicts with the provisions of the Constitution of the United States and the decisions of this Court.

CONCLUSION

For the reasons set forth above, respondent requests that the petition for writ of certiorari be denied.

Respectfully submitted,

M. JAMES BRADY
Counsel of Record
389 North University Ave.
Provo, UT 84601

MICHAEL D. ESPLIN
GARY H. WEIGHT
43 East 200 North
P.O. Box "L"
Provo, UT 84603-0200

Attorneys for Respondent

APPENDIX A — LETTER FROM PHILIP WASHBURN, M.D. DATED OCTOBER 10, 1984

PHILIP WASHBURN M.D.
MOUNTAIN VIEW PSYCHIATRIC CLINIC
39 Professional Way, Suite #2
PAYSON, UTAH 84651
485-2566

October 10, 1984

PHILIP WASHBURN M.D.
General Psychiatry

The Honorable J. Robert Bullock, Judge
Fourth Judicial District Court
State of Utah
Provo, Utah

Re: Dan Charles Lafferty
D.O.B. 06-12-48
Case #9309

Dear Judge Bullock:

I did a psychiatric evaluation on Mr. Dan Lafferty at the Utah County Jail on October 9, 1984. Mr. Lafferty consented to a psychiatric interview but declined doing any formal written psychiatric or psychological testing, however he was most cooperative during our interview and history taking session. As a result of this psychiatric evaluation, I offer the following opinions and conclusions. First; Mr. Dan Lafferty is suffering from a significant mental illness which has probably been present for a number of years. Second; In my opinion, Mr. Dan Lafferty is not competent to act in his own behalf as legal counsel because

of the presence of the mental illness which may jeopardize his right to all the protection that could be offered in the court processes. Third; Mr. Lafferty, because of his mental illness may not be competent to proceed with the court processes even if he consents to the assistance of legal counsel.

The essential facts of the examination which indicate the presence of the mental illness are prominant elements of paranoid thinking apparently dating back a number of years with intense suspiciousness regarding government systems, legal processes, taxation, court procedures and spreading to intense distrust of the L.D.S. Church. The mood and affect reflect an expansivness, grandiosity and the process of projection is evident. This paranoid delusion system shared with his brother Mr. Ron Lafferty, is well organized, deeply intrenched and presents as a major degree of impairment.

I have reserved the afternoon of Monday, October 15, for court testimony if needed.

Sincerely,

s/ Philip Washburn, M.D.
Philip Washburn, M.D.

PW/sbw

APPENDIX B — LETTER FROM PETER HEINBECKER, M.D., VAN O. AUSTIN, M.D., ROBERT J. HOWELL, PH.D. AND C. JESS GROESBECK, M.D. DATED JANUARY 22, 1985

[Seal: Seal of the State of Utah . . . 1896]

SOCIAL SERVICES

Scott M. Matheson, Governor,
State of Utah
Norman G. Angus, Executive Director

January 22, 1985

Honorable J. Robert Bullock
Fourth Judicial District Court Judge
Utah County Building
Provo, Utah 84601

RE: Ronald Watson Lafferty
Case No. 9309

Dear Judge Bullock:

We have completed our evaluation of Ronald Watson Lafferty whom you committed to this hospital on January 2, 1985 for an evaluation and a report to the Court as stipulated in the Utah Code Annotated 77-15-3. Our evaluation has consisted of multiple psychiatric interviews, physical examination, psychological assessment, Halstead-Reitan Psychoneurological Examination, electroencephalogram, computerizd tomographic brain scan, neurological evaluation, review of collateral information, observation of his functioning in the treatment setting and presentation before the clinical staff. It should be noted that we completed an extensive 22-day in-patient evaluation of this individual on November 27, 1984.

Appendix B

During this evaluation, we have seen signs of diffuse organic brain damage (of the dimentis type), which is consistent with his apparent attempted suicide by hanging, which occurred on December 29, 1984. This brain damage was clearly not present during our previous in-patient evaluation. The organic brain damage we have seen is characterized by: confusion, decreased intellectual functioning, both short-term and long-term memory impairment, decreased psycho-motor activity, disturbed sleep wakefulness pattern, decreased abstract thinking abilities, altered affect, and inability to perform certain purposeful behaviors. During this hospitalization, there has been gradual and progressive improvement in each of these features. We are unable to predict at this time to what extent his mental state will ever improve and approach normalcy, and are unable to predict at what rate he will continue to improve.

We find at this time he lacks the ability to comprehend the nature of the charges against him and the punishment specified for the offense charged and lacks the ability to either meaningfully assist his counsel in his defense, or to realistically conduct his own defense.

It is therefore, our recommendation that the Court commit Ronald Watson Lafferty to the Utah State Hospital as "not competent to stand trial" and order that he receive psychiatric treatment. We have specifically considered various treatment alternatives, and feel that in-patient care at the State Hospital would provide the best combination of security and protection along with expeditious treatment and professional observation.

Appendix B

Sincerely yours,

s/ Peter Heinbecker
Peter Heinbecker, M.D.
Clinical Director Forensic
Psychiatry

s/ Van O. Austin
Van O. Austin, M.D.
Forensic Psychiatrist

s/ Robert J. Howell
Robert J. Howell, Ph.D.
Clinical and Forensic Psychology

s/ C. Jess Groesbeck
C. Jess Groesbeck, M.D.
Medical Director

VOA/hh

Enclosures:

Psychiatric Evaluation
Psychological Evaluation
Social History
Halstead-Reitan Neuropsychological Assessment
Computerized Tomographic Brain Scan

APPENDIX C — LETTER FROM VAN O. AUSTIN, M.D., ROBERT J. HOWELL, PH.D., PETER HEINBECKER, M.D., J.D., AND C. JESS GROESBECK, M.D. DATED MARCH 19, 1985

1885 1985

UTAH STATE HOSPITAL
100 Years of Service

March 19, 1985

Honorable J. Robert Bullock
Fourth Judicial District Court Judge
Utah County Building
Provo, Utah 84601

Re: Ronald Watson Lafferty
Case No. 9309

Dear Judge Bullock:

We are submitting this report on the condition of Ronald Lafferty as required in your January 28, 1985 Court Order. On January 28, 1985, Mr. Lafferty was found by the Court to be "not competent to proceed." Since hospitalized, his treatment has consisted of individual and group counseling. He has adamently refused treatment with psychotropic medication.

Since our January 22, 1985 report to the Court, the signs of diffuse organic brain syndrome which we described have partially resolved and coincident with that, his personality structure and his demeanor have come to approximate his condition prior to December 29, 1984. However, as he has become more lucid and expressive, the pervasive religiosity which was present during

Appendix C

our evaluation in November, 1984, has developed into a religious delusional system which is associated with blurred ego boundaries. He is unable to determine the boundaries between himself and good and evil spirits and is unable to comprehend those involved in this evaluation or the Court processes do not function within his delusional system. At this time we feel that those symptoms are the result of paranoia. Further symptoms of this disorder include a paranoid delusional system which has generalized to include the entire judicial system, a paranoid pseudo-community involving the legal and social systems, grandiose denial, a religious martyr complex, and severely impaired ability to perceive and interpret reality. Although Mr. Lafferty's memory and recall have improved during this hospitalization, because of his unwillingness to honestly discuss this, we cannot accurately determine to what extent his memory has returned.

As to the specific questions surrounding "competency to proceed," our opinion is as follows:

1) Does he have a mental illness?

The answer to this is yes. He is suffering from an amnestic syndrome, secondary to encephalopathy caused by the hanging attempt on December 29, 1984, as well as paranoia.

2) Does he comprehend the nature of the proceedings against him or the punishment specified for the offenses charged?

While he has a factual understanding of the proceeding, he does not have a rational understanding . Our opinion on this question is no.

3) Can he assist has counsel in his defense?

Our opinion on this question is also no. He is very clear and adament that he does not intend to use a lawyer in any way. Further, it is our belief that he does have a mental illness in addition to the amnestic syndrome that we have already talked about, that of paranoia. His revelation which adds to the Mosiah Hancock revelation of the 19th Century is certainly reflective of Messianic grandiosity. Further, he is convinced that the judicial system and the hospital are in collusion with each other, and agents of corrupt man-made law. It is really us (including Court) who are on trial (from God) and not him. Finally, it is impossible for him to see the inconsistency of his objecting to others infringing on his liberty and an entitlement from God allowing him to infringe on the liberty of others. We believe that Mr. Lafferty cannot cooperate with a lawyer, if he agreed to representation. He has further made it very clear that he has absolutely no intention of cooperating with, or participating in, any Court processes.

Our opinion regarding competency is further confirmed by the "Dusky" standard (*Dusky v. United States,* 1960) in which the United States Supreme Court approved as a standard for Federal cases as being:

> The defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him.

We believe that Mr. Lafferty does not have the ability to consult with a lawyer with a reasonable degree of *rational* understanding, and does not have a rational understanding of the proceedings against him.

Appendix C

Based on this information, it is our recommendation that the Court continue Mr. Lafferty's current commitment as "not competent to proceed."

We further specifically find that:

a) Mr. Lafferty at this time has a mental illness as defined in Utah Code Annotated 64-7-28(1),

b) Because of Mr. Lafferty's mental illness he poses an immediate physical danger to himself and others which includes jeopardizing his own safety,

c) Mr. Lafferty lacks the ability to engage in a rational decision making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment,

d) There is no appropriate treatment alternative at this time to treatment at the Utah State Hospital, and

e) The Utah State Hospital can provide Mr. Lafferty with treatment, care, and custody that is adequate and appropriate to his conditions and needs.

In view of these specific findings, we are respectfully requesting a Court Order directing the Utah State Hospital to provide Mr. Lafferty with appropriate medical treatment, including psychotropic medication, which may include involuntary treatment.

Appendix C

Sincerely yours,

s/ Van O. Austin
Van O. Austin, M.D.
Clinical and Forensic Psychiatry

s/ Robert J. Howell
Robert J. Howell, Ph.D.
Clinical and Forensic Psychology

s/ Peter Heinbecker
Peter Heinbecker, M.D., J.D.
Clinical and Forensic Psychiatry

s/ C. Jess Groesbeck
C. Jess Groesbeck, M.D.
Medical Director